IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.1938 of 2007

Municipal Corporation of
Greater Mumbai Petitioner

Vs.

Kishore Mehta & anr. Respondents

Ms.Teja Katdare i/b. Mr.S.H.Ujjainwala & Mr.Uday Kedar for petitioner.

Mr.P.A.Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.

October 17, 2007.

P.C.

. This petition arises from the order passed by the learned Metropolitan Magistrate, 42nd Court, Shindewadi, Dadar, Mumbai passed in Misc. Application No.13 of 2006 filed under Section 473 of Cr.P.C. praying for condonation of delay caused in filing a criminal complaint under Sections 478, 478-1A and 478-1B of the Mumbai Municipal Corporation Act, 1888.

. The learned Metropolitan Magistrate noted that as per the averments in the complaint itself the offence was detected for the first time on 27/9/2005,

the complaint was filed 14 months beyond time and it was a complaint filed under the provisions of a special statute viz. the Mumbai Municipal Corporation Act. The application was rejected as per the order dated 4/12/2006.

. This order was challenged in Criminal Revision Application No.1424 of 2006. The Revision Court while dismissing the revision application by its judgment and order dated 27/4/2007 agreed with the view taken by the learned Metropolitan Magistrate and also dealt with the additional issue of the applicability of Section 473 of Cr.P.C. to the complaint filed under the Mumbai Municipal Corporation Act. It held that the complaint having been filed under the special statute and when the period of limitation has been specifically set out under Section 514 of the special Act, the complainant could not invoke the provisions of general penal procedural law viz. the Criminal Procedure Code.

. It is thus clear that the only issue that requires consideration is whether the provisions of Section 473 of Cr.P.C. could be invoked by the Corporation for its prayer to condone the delay when

Section 514 of the Mumbai Municipal Corporation Act specifically sets out the period of limitation for the complaints to be filed under the said Act. The reasoning set out by the Revision Court for answering the said issue against the Corporation reads as under:

> "... When there is a provision in Special Act for filing the complaint within a specified time, therefore, it was required for the complainant to file complaint within specified time as stipulated in the Special Act. In view thereof, the provisions of Section 473 of Cr.P.C. are not applicable to the present case. In that sense the complaint was required to be filed within three months from the date of commission of offence or its knowledge. When the applicant in the application for condonation of delay himself stated that there is delay of 100 days for filing the complaint whereas the offence was detected on 27/9/2005 and delay may be more than 14 months...."

. I do not find any error apparent on the face

of the record or any perversity in the view taken by the learned Additional Sessions Judge for Greater Mumbai and, therefore, this petition must fail at the threshold.

. The petition is rejected summarily.

(B.H.MARL